In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-140

CORNELIUS H. EDGE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on three counts charging him with illicit transactions in heroin, cocaine and marihuana, knowing these drugs to have been illegally imported (21 U.S.C. (1964 ed.) 174, 176a). He was sentenced to concurrent prison terms of ten years. The court of appeals reversed the convictions on the counts involving cocaine and marihuana because the trial court's

instructions permitted the jury to infer knowledge of illegal importation from petitioner's unexplained possession of those drugs; it affirmed the conviction involving heroin on the authority of *Turner* v. *United States*, 396 U.S. 398 (Pet. App. A).

We rely on the opinion of the court below, which adequately answers petitioner's claims, and add only the following.

1. Petitioner contends that the court of appeals' holding sustaining the second search of his car was undermined by this Court's intervening decision in *Coolidge* v. *New Hampshire*, No. 323, O.T., 1970, decided June 21, 1971. The court below found this second search valid because (1) there was probable cause to believe that the car was subject to forfeiture since it was being used to transport contraband marihuana (see *Cooper* v. *California*, 386 U.S. 58), and (2) it was not unreasonable for the agents to make a more thorough search of the car after removing it to a place with better lighting, see *Chambers* v. *Maroney*, 399 U.S. 42. Nothing in *Coolidge* impaired either of the grounds upon which the court below upheld the search. Unlike the situation in *Coolidge*, the initial entry into the automobile here was entirely proper since it was pursuant to an arrest warrant for petitioner who was driving his vehicle when apprehended.[1]

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[1] Although petitioner contends to the contrary, the circumstances set forth in the complaint and the affidavit of Agent Pringle clearly established probable cause for the issuance of the arrest warrant. See also *United States* v. *Harris*, No. 30, O.T., 1970, decided June 28, 1971.

2. Petitioner contends that the trial court's instructions regarding the inference to be drawn from petitioner's unexplained possession of heroin were invalid and in conflict with cases from the Second and Ninth Circuits (*United States* v. *Peeples*, 377 F.2d 205 (C.A. 2); *United States* v. *Christion*, 426 F.2d 787 (C.A. 9)). Those cases held it error to charge that the defendant's explanation of his possession must be lawful or innocent. The instruction here contained no such restriction and was plainly proper (see Pet. 11-12).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1971.

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